HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. Lodging No. 571 of 2003

Harsh Singh

vs

State of Uttaranchal and another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 04.12.2003

Initial of Judge

In the High Court of Uttaranchal at Nainital

Court No.6

Lodging No. 571 of 2003

Harsh Singh ……Petitioner

Vs.

State of Uttaranchal and anothers ..…… Respondents

Dated of Judgment :- 04.12.2003

Hon'ble Rajesh Tandon, J.

Heard Sri B.D.Upadhyaya learned counsel for the petitioner and the learned Standing counsel for the State.

By the present Writ Petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus for commanding the respondents to regularize the services of the petitioner on group-'D' post under the Uttaranchal Forest Department Regulation of Daily Wages Appointment Rules, 2003.

Brief facts giving rise to the present petition are that the petitioner was posed on daily wages as a helper of the Forest Guard in the Forest Range, Dhumakot, District Pauri Garhwal in the year 19858 and he worked continuously till 18.6.1997. Unfortunately, on 19.6.1997 during the course of employment the right hand of the petitioner was badly damaged due to felling of sudden live wire of high power transmission line of the electricity on the right hand of the petitioner while he was in forest. The petitioner was admitted in Safdarjang Hospital, New Delhi on 20.6.1997 and ultimately on medical advice the right hand of the petitioner was uprooted. The petitioner was discharged on 30.12.1997 with an advice to take complete rest at least for a period of six months.

The petitioner has submitted that on account of the injuries sustained by him during the course of employment he became disabled and certificate to that effect was given to the petitioner by the hospital on 6.7.1998. The petitioner has also submitted that the disability certificate

which shows that the petitioner is physically handicapped to the extent of 90% on account of the deregulation of right shoulder.

The petitioner has submitted that other daily wage employees of the Forest Department have already been regularized those who had preferred the writ petition before the Allahabad High Court and the order was confirmed by the Hon'ble Supreme Court.

The petitioner has referred the judgment in **2002, 2 UPLBEC 1595 State of U.P. and others Vs. Putti Lal,** which is quoted below:

> *"5. In several cause this Court applying the principle of equal pay for equal work has held that a daily wager, if he is discharging the similar duties as these in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counter part, in the Government. In our opinion that would be the correct position and was therefore, direct that these daily wagers would be entitled to draw at the minimum of the pay scale being received by their counter part in the in the Government and would not be entitled to any other allowances or increment so long as they continue on daily wages. The question of their regular absorption with obviously be dealt with in accordance with the statutory rule already referred to.*
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> *6. So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before we which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularization. Be it stated that the qualification essential for being regularize would be the qualification as was relevant on the date a particular employee was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still would not be open*

for the Court to indicate as to how many posts would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case of these daily wages sympathetically; who have discharged the duties for all these years to the satisfaction of their Authority concerned. So far as the salary is concerned, as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government unfit, his services are regularized and he given regular scale of pay."

The petitioner has stated that in pursuance of the judgment of the Apex Court the State of Uttaranchal has formed a rule known as "Uttaranchal Forest Department Regularization(on Group 'D' Posts) of Daily Wages Appointment Rules, 2003". The preamble of the Act says that the rules may be called Uttaranchal Forest Department Regularization(on Group 'D' Posts) of Daily Wages Appointment Rules, 2003.

The criteria has been mentioned under Rule 4 which reads as under:

"4. Regulation of daily wages appointments on Group "D" posts :

(i) Any person who:-

(a) was directly appointed on daily wages basis on a Group "D" post in the Forest Department under Government service before June 29, 1991 and in continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest Department in

Group "D" post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act (Uttaranchal Adaptation and Modification) order 2001, and the Uttar Pradesh Public Services (Reservation for physically Handicapped, Dependents of freedom fighters and Ex-Servicemen Act, 1993 as amended from time to time and the orders of the Government in force at the time or regularization under these rules, and

Note :- In this connection the provision of reservation shall be fixed vide Uttaranchal Govt. Karmik Department Dehradun's letter no. 1144/Karmik-2-2001/53(1)/2001, dated 18.7.2001 and 1415/Karmik-2/2001, dated 30.8.2001 for the state of Uttaranchal.

(3) For the purpose of sub-rule (1)the Principal Chief Conservator of Forests (PCCF) shall constitute a State Level Selection Committee.

(4) The appointing authority shall, having regard, to the provisions of sub-rule (1), forward complete details of the vacancies of Group "D" Posts and list of the persons working on daily wages, alongwith complete relevant information/records, with regard to Division/Circle/Office under his control, to the Chief Conservator of Forests (Administration) who shall prepare an eligibility list of the candidates, arranged in order to seniority as determined from the date of order of appointment on daily wage basis and if

two or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee alongwith such relevant records pertaining to the candidates, as may be considered necessary, to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order to seniority, and forward the same to the Chief Conservator of Forests (Administration). The Chief Soncervator of Forests (Administration), keeping in view the position/number of the vacancies of Group "D" posts in different Divisions / Circles / Offices and subject to the sub-rule (2) of Rule 4, forward the names of selected candidates, in the order in which their names stand in the list to the appointing authority concerned.

The petitioner has brought to the notice of the court regarding the recommendations made on 1.9.2003 by the Divisional Forest Officer in the letter dated 28.8.2003, which is quoted below:-

"इस कार्यालय के सन्दर्भित पत्र के साथ इस प्रभाग के दैनिक वेतन श्रमिको की सूची निर्धारित प्रपत्र पर सलग्न कर प्रेषित की गई है। इस विषयक में सूचित करते हुये अनुरोध करना है कि सूची के द्वितीय भाग के क्रमांक 12 पर अंकित श्री हर्ष सिंह पुत्र स्व0 श्री गोबिन्द सिंह ने अपने प्रार्थना पत्र दिनांक 30.8.2003 के दवारा अवगत कराया है कि वे राजकीय कार्य में कार्यरत रहते हुये अचानक हाई पावर विद्युत लाइन के टूटे तार के चपेट में आ जाने के कारण गम्भीर रुप से घायल हो गये एवं इसके कारण उनका दॉया हाथ जख्मी हो गया इसी के परिणामस्वरुप उन्हें सफदरजंग अस्पताल दिल्ली से उपचार करवाना पडा एवं वे एक हाथ के विंकलांग हो गये। अस्पताल के चिकित्सको की राय के अनुसार उन्हे उपचार के प्च्चात भाी लगभग 6 माह तक आराम करने की सलाह दी गई। इसके प्च्चात वे

जुलाई–98 से पुनः रेज में कार्य पर उपस्थित हो गये एवं नियमित रुप से रेंज में श्रमिक के रुप में कार्य करते आ रहे है।

श्रमिक ने उनके साथ हुई दैविक अपदा को मघ्यनजर रखते हुये सहानुभुति पूर्वक विचार कर वन रक्षक के पदो पर विनियमितीकरण हेतु अनुरोध किया है।

अतः अनुरोध है कि श्री हर्ष सिंह पुत्र स्व0 गोबिन्द सिंह श्रमिक के विनियमितीकरण के संबन्ध में समिति सहानुभूतिपूर्वक विचार करने की कृपा करे।"

Inspite of the recommendations made by the Divisional Forest Officer, the services of the petitioner has not yet been regularized.

The petitioner has stated that he is continuing in service since 1985 as well appear from Rule 4B that the cut off date has been shown as 29.6.1991 and further the petitioner has a requisite qualification prescribed for regularization for the post under the relevant service rules. The criteria of suitability has also been mentioned in clause 4 of Rule 14.

The grievance of the petitioner is that the said exercise has not yet been started inspite of the representation made by the petitioner on 18.11.2003. The petitioner has stated that he is fully covered under the Regulation of Daily Wages Appointment on Group-D Posts as such he is liable for the regularization.

As already observed above, the Apex Court has already held that as so far as the State of Uttaranchal is concerned, the scheme of daily wages has been produced and in the light of the scheme the regularization orders are required to be passed.

The Apex Court has also held that the employees have been employed for so many years indicates the existence or the necessities for having such posts and such the Apex Court has directed for absorption of the daily wages employees.

A scheme has been formulated by the State of Uttaranchal in pursuance of the order in **2002, 2 UPLBEC 1595 State of U.P. and others Vs. Putti Lal,** which is a welfare scheme which protects the rights of various daily wagers. Therefore, the State of Uttaranchal is directed to frame such schemes for other daily wage employees of other departments.

The welfare scheme should also be followed for other daily wage employees in view of the judgment in **AIR 1983 S.C. 130 between D.S.Nakara Vs. Union of India,** which is quoted:

"24. To some extent this approach will find support in the judgment in Minerva Mills Ltd. Vs. Union of India, (1981) 1 SCR 206: (AIR 1980 SC 1789) speaking for the majority, Chandrachud, C.J. observed as under:

> *"This is not mere semantic. The edifice of our Constitution is built upon the concepts crystallized in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice – social, economic and political. We, therefore, put Part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved.*
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> *At a later stage, it was observed, that the fundamental rights are not an end in themselves but are the means to an end, the end is specified in Part IV. Bhagwati, J. in his minority judgment after extracting a portion of the speech of the then Prime Minister Jawahar Lal Nehru, while participating in a discussion on the Constitution (First Amendment) Bill, observed that the Directive principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and everyone, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the fundamental rights. It, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."*

The respondents are directed to consider the regularization of the petitioner within a period of six weeks from the date of filing of the certified copy of the order.

Subject to the aforesaid observations, the writ petition is disposed of.

Dated 4.12.2003 **(Rajesh Tandon, J.)**
Rawat